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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010 - 234**

13 **KIMBERLY MAE FLORES**
409 E. Thornton Avenue, Apt. Z102
14 Hemet, CA 92543

A C C U S A T I O N

15 **Registered Nurse License No. 602182**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, MEd., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about July 18, 2002, the Board of Registered Nursing issued Registered Nurse
24 License Number 602182 to Kimberly Mae Flores (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 February 28, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

....

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

1 (a) Obtain or possess in violation of law, or prescribe, or except as directed
2 by a licensed physician and surgeon, dentist, or podiatrist administer to himself or
3 herself, or furnish or administer to another, any controlled substance as defined in
4 Division 10 (commencing with Section 11000) of the Health and Safety Code or
5 any dangerous drug or dangerous device as defined in Section 4022.

6 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
7 entries in any hospital, patient, or other record pertaining to the substances described
8 in subdivision (a) of this section.

9 8. Section 4022 of the Code states

10 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
11 self-use in humans or animals, and includes the following:

12 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
13 without prescription," "Rx only," or words of similar import.

14 (b) Any device that bears the statement: "Caution: federal law restricts this
15 device to sale by or on the order of a _____," "Rx only," or words of similar
16 import, the blank to be filled in with the designation of the practitioner licensed to
17 use or order use of the device.

18 (c) Any other drug or device that by federal or state law can be lawfully
19 dispensed only on prescription or furnished pursuant to Section 4006.

20 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any
21 controlled substance, except that furnished to a person upon the valid prescription of a physician,
22 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

23 10. Health and Safety Code section 11350, subdivision (a) states:

24 Except as otherwise provided in this division, every person who possesses (1)
25 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
26 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
27 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
28 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment in the state prison.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1443 states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

12. California Code of Regulations, title 16, section 1443.5 states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

13. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not limited to, those
2 violations listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to
6 Section 290 of the Penal Code.

7 COST RECOVERY

8 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licensee found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 DRUGS

13 15. Hydromorphone, the generic name for Dilaudid, is a Schedule II controlled substance
14 as designated by Health and Safety Code Section 11055, subdivision (b)(1)(K), and is a
15 dangerous drug pursuant to Business and Professions Code section 4022.

16 16. Morphine is a Schedule II controlled substance as designated by Health and Safety
17 Code section 11055, subdivision (b)(1)(M), and is a dangerous drug pursuant to Business and
18 Professions Code section 4022.

19 17. Clonazepam, generic name for Klonopin, is a Schedule IV controlled substance as
20 designated by Health and Safety Code section 11057, subdivision (d)(7), and is a dangerous drug
21 pursuant to Business and Professions Code section 4022.

22 18. Lorazepam, the generic name for Ativan, is a Schedule IV controlled substance as
23 designated by Health and Safety Code section 11057, subdivision (d)(16), and is a dangerous
24 drug pursuant to Business and Professions Code section 4022.

25 19. Midazolam, the generic name for Versed, is a Schedule IV controlled substance as
26 designated by Health and Safety Code section 11057, subdivision (d)(21), and is a dangerous
27 drug pursuant to Business and Professions Code section 4022.

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FACTS

20. At all times referenced herein, Respondent was employed as a registered nurse at the John F. Kennedy Memorial Hospital (hospital) in Indio from November 7, 2005 until she was terminated on April 25, 2007.

21. On or about May 7, 2007, the Board received a complaint of drug diversion activity from the hospital's chief nursing officer in that there were discrepancies regarding Respondent's documentation of controlled substance administration to patients, and narcotic administration documentation that was not validated by patient need or noted in the patient's record. The Board referred the matter to the Division of Investigation (DOI) and requested an investigation of the complaint against Respondent.

22. On or about May 12, 2008, a DOI investigator interviewed the nursing director of the hospital's intensive care unit (ICU). (Respondent worked exclusively in the ICU during her employment at the hospital.) The nursing director first became aware of the diversion activity when the monthly Pyxis¹ reports provided by the pharmacy director indicated suspicious activity attributable to Respondent. The nursing director found problems and concerns in about 80% of the charts she reviewed for the time period of January to March 2007.

23. As a result of the DOI investigation and review of the hospital's medical records, Pyxis activity reports, and Medication Administration Record (MAR) for 13 patients, the following discrepancies were noted:

Patient 1: Patient 1 had a physician's order for hydromorphone (Dilaudid) 0.5 mg by I.V. every 3 hours for pain. According to the Pyxis report, on February 4, 2007 at 0812 hours, Respondent withdrew 2 mg. of hydromorphone with 1.5 mg. recorded wasted. At 1203 hours, Respondent withdrew 2 mg. of hydromorphone with no wastage recorded. Respondent charted in

¹ Pyxis refers to an automated single-unit dose medication dispensing system that records information such as patient name, physician orders, the date and time medication was withdrawn, the name of the licensed individual who withdrew and administered the medication, the date and time and the witnesses to the wastage of unused or leftover medications. After completing a thorough orientation and training program, Respondent was given access to the hospital's Pyxis and regularly withdrew medications for administration to her assigned patients using her user I.D. and password.

1 Patient 1's MAR the administration of 1.5 mg. of hydromorphone at 0820 hours and another 1.5
2 mg. at 1015 hours. Respondent charted the administration of hydromorphone in excess of the
3 physician's order, and at times that were not consistent with the withdrawal from Pyxis.
4 Respondent failed to account for 0.5 mg. of hydromorphone.

5 Patient 2: According to the Pyxis report, on February 10, 2007 at 0827 hours,
6 Respondent withdrew 2 mg. of lorazepam (Ativan), with no wasted reported. Respondent did not
7 chart the administration of lorazepam in Patient 2's MAR. There was no physician order for
8 lorazepam for Patient 2. Respondent failed to account for 2 mg. of lorazepam.

9 Patient 3: Patient 3 had a physician's order for lorazepam 2 mg. every 4 hours.
10 According to the Pyxis report, on February 10, 2007 at 1301 hours, Respondent withdrew 2 mg.
11 of lorazepam but did not chart the administration in Patient 3's MAR. Respondent failed to
12 account for 2 mg. of lorazepam.

13 Patient 4: Patient 4 had a physician's order for midazolam (Versed) 100 mg.
14 According to the Pyxis report, on February 18, 2007 at 0848 hours, Respondent withdrew 50 mg.
15 of midazolam with no wastage reported. Respondent did not chart the administration of the
16 midazolam in Patient 4's MAR. Respondent failed to account for 50 mg. of midazolam.

17 Patient 5: Patient 5 had a physician's order for morphine 4 mg. every 4 hours for
18 severe pain, and lorazepam 2 mg. every 2 hours. According to the Pyxis report, on February 23,
19 2007 at 1347 hours, Respondent withdrew morphine 4 mg. with no wastage recorded, and
20 lorazepam 2 mg. with no wastage recorded. Respondent did not chart the administration of the
21 morphine or the lorazepam in Patient 5's MAR. Respondent failed to account for 2 mg. of
22 morphine and 2 mg. of lorazepam.

23 Patient 6: Patient 6 had a physician's order for morphine 4 mg. every 2 hours for
24 severe pain. According to the Pyxis report, on February 27, 2007 at 1512 hours, Respondent
25 withdrew morphine 4 mg. with no wastage recorded. Respondent charted in Patient 6's MAR
26 that she administered the morphine at 1300 hours, over 2 hours before the dose was withdrawn
27 from Pyxis.

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1 Patient 7: Patient 7 had a physician's order for clonazepam 0.5 mg. 4 times a day.
2 According to the Pyxis report, on March 27, 2007 at 1622 hours, Respondent withdrew 0.5 mg. of
3 clonazepam with no wastage recorded. At 1623 hours, Respondent withdrew 0.5 mg. of
4 clonazepam with no wastage recorded. Respondent charted in Patient 7's MAR that she
5 administered 0.5 mg. of clonazepam at 1700 hours. Respondent failed to account for 0.5 mg. of
6 clonazepam.

7 Patient 8: Patient 8 had a physician's order for lorazepam 2 mg. every 4 hours for
8 severe anxiety. According to the Pyxis report, on February 10, 2007 at 1125 hours, Respondent
9 withdrew 2 mg. of lorazepam with no wastage recorded. Respondent charted in Patient 8's MAR
10 that the dose was administered at 0830 hours, approximately three hours before it was withdrawn
11 from Pyxis.

12 Patient 9: Patient 9 had a physician's order for Vicodin, one tablet taken by mouth
13 every 6 hours. According to the Pyxis report, on March 30, 2007 at 1525 hours, Respondent
14 withdrew one Vicodin tablet with no wastage reported. Respondent charted in Patient 9's MAR
15 that the dose was administered at 1400 hours, 85 minutes before it was withdrawn from Pyxis.

16 Patient 10: Patient 10 had a physician's order for Dilaudid (hydromorphone) 2 mg.
17 every 2 hours. According to the Pyxis report, on March 20, 2007 at 1435 hours, Respondent
18 withdrew 2 mg. of hydromorphone with no wastage recorded. Respondent charted in Patient 10's
19 MAR that the dose was administered at 1230 hours, over 2 hours before it was withdrawn from
20 Pyxis.

21 Patient 11. Patient 11 had a physician's order for morphine 4 mg. every 2 hours for
22 severe pain, and lorazepam 1 mg. every 6 hours. According to the Pyxis report, on February 16,
23 2007 at 1842 hours, Respondent withdrew lorazepam 2 mg. Respondent charted in Patient 11's
24 MAR that she administered 1 mg. of lorazepam at 1845 hours but failed to account for the
25 wastage. Respondent charted that she administered 2 mg. of morphine but the Pyxis report did
26 not record that morphine was withdrawn. Respondent failed to account for 1 mg. of lorazepam.

27 Patient 12. Patient 12 had a physician's order for hydromorphone 1 mg. every 4
28 hours. According to the Pyxis report, on March 19, 2007 at 1740 hours, Respondent withdrew

1 hydromorphone 2 mg. Respondent charted in Patient 12's MAR that she administered 1 mg. of
2 hydromorphone at 1815 hours but failed to account for the wastage. Respondent failed to account
3 for 1 mg. of hydromorphone.

4 Patient 13. Patient 13 had a physician's order for promethazine with codeine syrup 5
5 ml. According to the Pyxis report, on February 27, 2007 at 0916 hours, Respondent withdrew 5
6 ml. of promethazine and charted in Patient 13's MAR that she administered the promethazine at
7 0800, 76 minutes before it was withdrawn from Pyxis.

8 24. Respondent failed to account for 1.5 mg. of hydromorphone, 4 mg. of morphine, 7
9 mg. of lorazepam, 50 mg. of midazolam, and 0.5 mg. of clonazepam in any hospital record.

10 FIRST CAUSE FOR DISCIPLINE

11 (Incompetence)

12 25. Respondent is subject to disciplinary action under section 2761, subdivisions (a)(1)
13 and (d) of the Code for unprofessional conduct in that on or about February 4, 2007 through
14 March 30, 2007, as described in paragraph 23, above, Respondent removed controlled substances
15 from Pyxis and failed to chart the administration of same in the patients' hospital records,
16 removed controlled substances from Pyxis without a physician's order, failed to chart wastage,
17 and charted the administration of controlled substances in a patient's MAR before the drug had
18 been withdrawn from Pyxis. Such unprofessional conduct is inconsistent with the degree of
19 learning, skill, care and experience ordinarily possessed and exercised by a competent registered
20 nurse.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct – Possession of a Controlled Substance)

23 26. Respondent has subjected her license to disciplinary action under sections 2762,
24 subdivision (a) and 2761, subdivision (d) of the Code in that on or about and between February 4,
25 2007 and March 30, 2007, as described in paragraph 23, Respondent failed to account for 1.5 mg.
26 of hydromorphone, 4 mg. of morphine, 7 mg. of lorazepam, 50 mg. of midazolam, and 0.5 mg. of
27 clonazepam in any hospital record. Such unprofessional conduct is substantially related to the
28 qualifications, functions, and duties of a registered nurse.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Falsify Hospital Records Pertaining to Controlled Substances)

3 27. Respondent has subjected her license to disciplinary action under sections 2762,
4 subdivision (e) and 2761, subdivision (d) of the Code for unprofessional conduct in that on or
5 about and between February 4, 2007 and March 30, 2007, as described in paragraph 23,
6 Respondent removed controlled substances from Pyxis without properly accounting for either the
7 proper administration or wastage of said controlled substances in any hospital record, and
8 specifically charted medications administered to patients before they were withdrawn from Pyxis.
9 Such conduct is substantially related to the qualifications, functions, and duties of a registered
10 nurse pursuant to California Code of Regulations, title 16, section 1444, subdivision (c).

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Registered Nursing issue a decision:

- 14 1. Revoking or suspending Registered Nurse License Number 602182, issued to
15 Kimberly Mae Flores;
16 2. Ordering Kimberly Mae Flores to pay the Board of Registered Nursing the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3;
19 3. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: 10/22/09

23 *Louise R. Bailey*
24 LOUISE R. BAILEY, MEd., RN
25 Interim Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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